



Reprinted
February 25, 2003

HOUSE BILL No. 1476

DIGEST OF HB 1476 (Updated February 24, 2003 2:46 PM - DI 103)

Citations Affected: IC 5-14.

Synopsis: Confidentiality of personnel records. Provides that information in a personnel file of a public employee or an applicant for public employment concerning findings of fact and decisions: (1) upon which a final action has been taken; and (2) that result in the employee being disciplined or discharged by vote of the governing body of the public agency; must be made available for public inspection and copying. Allows the governing body of a public agency to give notice of a meeting to news media by facsimile transmission (fax) or electronic mail.

Effective: July 1, 2003.

Kersey, Thomas

January 15, 2003, read first time and referred to Committee on Technology, Research and Development.
February 18, 2003, amended, reported — Do Pass.
February 24, 2003, read second time, amended, ordered engrossed.

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HB 1476—LS 6776/DI 87+



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1476

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-1.5-5, AS AMENDED BY P.L.90-2002,
2 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 5. (a) Public notice of the date, time, and place of
4 any meetings, executive sessions, or of any rescheduled or reconvened
5 meeting, shall be given at least forty-eight (48) hours (excluding
6 Saturdays, Sundays, and legal holidays) before the meeting. This
7 requirement does not apply to reconvened meetings (not including
8 executive sessions) where announcement of the date, time, and place
9 of the reconvened meeting is made at the original meeting and recorded
10 in the memoranda and minutes thereof, and there is no change in the
11 agenda.
12 (b) Public notice shall be given by the governing body of a public
13 agency by:
14 (1) posting a copy of the notice at the principal office of the
15 public agency holding the meeting or, if no such office exists, at
16 the building where the meeting is to be held; and
17 (2) ~~depositing in the United States mail with postage prepaid or~~

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by delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. **The governing body shall give notice by one (1) of the following methods:**

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail.

(C) Transmitting the notice by facsimile (fax).

If a governing body comes into existence after January 1, it shall comply with this subdivision upon receipt of a written request for notice.

In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the intelnet commission under IC 5-21-2.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

(d) If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to this section.

(e) This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

(f) This section shall not apply to:

(1) the department of local government finance, the Indiana board of tax review, or any other governing body which meets in continuous session, except that this section applies to meetings of these governing bodies which are required by or held pursuant to statute, ordinance, rule, or regulation; or

(2) the executive of a county or the legislative body of a town if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the

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unit. "Administrative functions" do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.

(g) This section does not apply to the general assembly.

(h) Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting.

SECTION 2. IC 5-14-3-4, AS AMENDED BY P.L.1-2002, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(11) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

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- 1 (B) Social Security number.
- 2 (C) Address.
- 3 (12) A photograph, a video recording, or an audio recording of an
- 4 autopsy, except as provided in IC 36-2-14-10.
- 5 (b) Except as otherwise provided by subsection (a), the following
- 6 public records shall be excepted from section 3 of this chapter at the
- 7 discretion of a public agency:
- 8 (1) Investigatory records of law enforcement agencies. However,
- 9 certain law enforcement records must be made available for
- 10 inspection and copying as provided in section 5 of this chapter.
- 11 (2) The work product of an attorney representing, pursuant to
- 12 state employment or an appointment by a public agency:
- 13 (A) a public agency;
- 14 (B) the state; or
- 15 (C) an individual.
- 16 (3) Test questions, scoring keys, and other examination data used
- 17 in administering a licensing examination, examination for
- 18 employment, or academic examination before the examination is
- 19 given or if it is to be given again.
- 20 (4) Scores of tests if the person is identified by name and has not
- 21 consented to the release of his scores.
- 22 (5) The following:
- 23 (A) Records relating to negotiations between the department
- 24 of commerce, the Indiana development finance authority, the
- 25 film commission, the Indiana business modernization and
- 26 technology corporation, or economic development
- 27 commissions with industrial, research, or commercial
- 28 prospects, if the records are created while negotiations are in
- 29 progress.
- 30 (B) Notwithstanding clause (A), the terms of the final offer of
- 31 public financial resources communicated by the department of
- 32 commerce, the Indiana development finance authority, the
- 33 Indiana film commission, the Indiana business modernization
- 34 and technology corporation, or economic development
- 35 commissions to an industrial, a research, or a commercial
- 36 prospect shall be available for inspection and copying under
- 37 section 3 of this chapter after negotiations with that prospect
- 38 have terminated.
- 39 (C) When disclosing a final offer under clause (B), the
- 40 department of commerce shall certify that the information
- 41 being disclosed accurately and completely represents the terms
- 42 of the final offer.

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(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) information concerning **disciplinary actions in findings of fact and decisions upon** which final action has been taken and that resulted in the employee being disciplined or discharged **by vote of the governing body of the agency.**

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

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(A) the donor requires nondisclosure of his identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of

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1 higher education.

2 (3) A list of students who are enrolled in a public school
3 corporation if the governing body of the public school corporation
4 adopts a policy:

5 (A) prohibiting the disclosure of the list to commercial entities
6 for commercial purposes; or

7 (B) specifying the classes or categories of commercial entities
8 to which the list may not be disclosed or by which the list may
9 not be used for commercial purposes.

10 A policy adopted under subdivision (3) must be uniform and may not
11 discriminate among similarly situated commercial entities.

12 (d) Nothing contained in subsection (b) shall limit or affect the right
13 of a person to inspect and copy a public record required or directed to
14 be made by any statute or by any rule of a public agency.

15 (e) Notwithstanding any other law, a public record that is classified
16 as confidential, other than a record concerning an adoption, shall be
17 made available for inspection and copying seventy-five (75) years after
18 the creation of that record.

19 (f) Notwithstanding subsection (e) and section 7 of this chapter:

20 (1) public records subject to IC 5-15 may be destroyed only in
21 accordance with record retention schedules under IC 5-15; or

22 (2) public records not subject to IC 5-15 may be destroyed in the
23 ordinary course of business.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Technology, Research and Development, to which was referred House Bill 1476, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-14-1.5-5, AS AMENDED BY P.L.90-2002, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency by:

- (1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and
- (2) ~~depositing in the United States mail with postage prepaid or by~~ delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. **The governing body shall give notice by one (1) of the following methods:**

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail.

(C) Transmitting the notice by facsimile (fax).

If a governing body comes into existence after January 1, it shall comply with this subdivision upon receipt of a written request for notice.

In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the intelnet commission under IC 5-21-2.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does

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not apply to executive sessions.

(d) If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to this section.

(e) This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

(f) This section shall not apply to:

(1) the department of local government finance, the Indiana board of tax review, or any other governing body which meets in continuous session, except that this section applies to meetings of these governing bodies which are required by or held pursuant to statute, ordinance, rule, or regulation; or

(2) the executive of a county or the legislative body of a town if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.

(g) This section does not apply to the general assembly.

(h) Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1476 as introduced.)

HASLER, Chair

Committee Vote: yeas 12, nays 1.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1476 be amended to read as follows:

Page 5, line 19, reset in roman "disciplined".

Page 5, line 19, delete "suspended".

Page 5, line 20, delete "without pay".

Page 5, line 20, delete "." and insert **"by vote of the governing body of the agency."**

(Reference is to HB 1476 as printed February 19, 2003.)

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